

**OPINION
59-83**

May 19, 1959 (OPINION)

EDUCATION

RE: Foundation Finance Program - Appropriation

We have received your request for an opinion with reference to the following problem:

House Bill No. 551 passed by the last legislative assembly is the new foundation finance program in education. This new program will require more money to operate than the present program. The legislature overlooked this and appropriated only on the basis of the present program. This will leave a deficit or shortage, and you ask what your department shall do under the circumstances.

House Bill No. 551 was one of the bills which was not passed until the final hours of the Thirty-sixth Legislative Session. The appropriation bill was a separate bill which was drafted on the basis of financial needs under the present law. It is, therefore, obvious that failure to appropriate enough was an oversight on the part of the legislature. Your department may therefore use the available funds to carry on the new program as far as they reach. Since the payment for the last year of the 1959-61 biennium is not due and payable until December 31, 1960, and the Thirty-seventh Legislative Assembly convenes on January 2, 1961, it no doubt will pass a deficiency appropriation bill to allow full payment, but should it fail to do so your department will have to prorate the last payment as now provided for by law.

LESLIE R. BURGUM

Attorney General